SUPREME COURT, U.S.
FILED
OCT 8 1970
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 819

SHELDON OWINGS, *Petitioner*,

v.

STATE OF MARYLAND, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

Karl Goodman
I N A Building
303 East Fayette Street
Baltimore, Maryland 21201
752-5653

Morris Lee Kaplan
1305 Court Square Building
Baltimore, Maryland 21202
539-5224

Michael Lee Kaplan
1305 Court Square Building
Baltimore, Maryland 21202
539-5224

Attorneys for Petitioner

Washington, D. C. Theis Press 202 [illegible]

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
REASONS FOR GRANTING THE WRIT	2
STATEMENT OF QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	3
ARGUMENT	
I. The Court of Special Appeals of Maryland Denied the Petitioner the Protection of the Fourth Amendment of the Constitution of the United States by Affirming the Lower Court's Decision that the Search of the Petitioner's Car and the Arrest of the Petitioner Was Legal	3
CONCLUSION	7
Appendix A - Opinion of the Court of Special Appeals of Maryland	A-1
Appendix B - Order of the Court of Appeals of Maryland	B-1

TABLE OF AUTHORITIES

Cases:

Glisson v. U.S., 406 Fed. 2nd at p. 424	6
Saben v. U.S., 381 U.S. 214 85 S.Ct. 1365	5
Spinelli v. U.S., 89 Sup. Court Reporter 587	4
U.S. v. Kleefeld, 275 F. Supp. 761	6

Constitutional Provisions:

Fourth Amendment	2, 4
28 U.S.C.S. 1257(3)	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No.

SHELDON OWINGS, *Petitioner*,

v.

STATE OF MARYLAND, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

Sheldon Owings, Petitioner, prays that a Writ of Certiorari issue to renew the judgment of the Court of Special Appeals of Maryland entered January 28, 1970, affirming the conviction as to Indictment No. 140 of the 1969 Docket of the Criminal Court of Baltimore City in the case of Sheldon Owings, Appellant v. State of Maryland, Appellee, September Term, 1969, No. 209.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Special Appeals of Maryland is reported 8 Md. App. 572 and is included as Appendix A to this Petition. The order of the Court of Appeals of Maryland is unreported and is attached as Appendix B hereto.

JURISDICTION

The judgment of the Court of Special Appeals of Maryland sought to be reviewed was filed on January 28, 1970. The Order of the Court of Appeals of Maryland denying the Petition for Writ of Certiorari was entered on May 11, 1970. That a Petition For An Extension of Time To File A Writ of Certiorari to the Supreme Court was granted by the Court to the 8th of October, 1970. The jurisdiction of this Court is invoked under 28 U.S.C.S. 1257(3).

REASONS FOR WRIT

Petitioner, as reasons why the issuance of such a Writ is desirable and in the public interest, asserts:

A. That the Petitioner is entitled to the protection of the Fourth Amendment of the Constitution of the United States and the failure of the Court to protect this right created a constitutional prejudicial error.

(1) In that a person must be properly arrested and that the search of his vehicle must also be proper or the protection of a person is afforded under the Fourth Amendment of the Constitution is being denied to that individual.

STATEMENT OF QUESTIONS PRESENTED

The public interest is the administration of Criminal justice calls for a determination by the Court of the issue presented in this case. The issue is whether or not a constitutional violation contributed to the conviction of the Petitioner in the indictment in which he was charged.

The question presented here is whether the Court of Special Appeals of Maryland denied the Petitioner's rights under the Fourth Amendment of the Constitution of the United States in affirming the conviction on Indictment No. 140 in that the Petitioner's rights were violated because his vehicle was improperly searched and that as a result of the improper search the Petitioner was improperly arrested.

STATEMENT OF THE CASE

Petitioner, Sheldon Owings, was indicted by the Grand Jury of Baltimore City on January 17, 1969, in one indictment charging him with the violation of the narcotic laws. Petitioner was tried before Judge George D. Solter, without a jury, on Indictment No. 140 on May 1, 1969. The Court found the Petitioner guilty and sentenced the Petitioner to a term of four years.

The Petitioner immediately filed an appeal to the Court of Special Appeals of Maryland raising several contentions, one of which was that his vehicle was illegally searched and that he was illegally arrested.

ARGUMENT

I

THE COURT OF SPECIAL APPEALS OF MARYLAND DENIED THE PETITIONER THE PROTECTION OF THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES BY AFFIRMING THE LOWER COURT'S DECISION THAT THE SEARCH OF THE PETITIONER'S CAR AND THE ARREST OF THE PETITIONER WAS LEGAL.

The Petitioner in this case claims that his car was illegally searched and that he was illegally arrested. The Petitioner's rights as to the search of his car and his arrest which are protected by the Fourth Amendment of the Constitution of the United States were not protected by the lower Court but that their rulings amounted to a constitutional prejudicial error which resulted in his conviction in this case.

The factual situation in the Petitioner's case which lead to his arrest and the search and seizure of items in his car will be given to the Court briefly.

At Petitioner's trial, Sergeant Tabeling of the Baltimore City Police Department testified that he received some information around 6:00 p.m. on December 28, 1968, to the

effect that a man with a reddish beard and reddish colored hair would come to 11 Elmwood Road around 7:00 p.m. with some narcotic contraband. He was supposed to be driving a light-colored Volkswagon with foreign tags on it. Acting upon the information, the Sergeant went to the location and upon seeing a gray-colored Volkswagon with foreign tags backing out of a driveway went to the vehicle. He informed the driver that he was a policeman and that he intended to search his car for narcotics. He did not have a search warrant at that time. The Sergeant made the search of the car, found some contraband and arrested Owings. After the arrest, Owings was searched and a pair of tweezers and a scale was found upon him.

At the Petitioner's trial, the State introduced the items seized from the Petitioner's car and person into evidence at which time an objection was made as to their admissibility because they were the fruits of an illegal search and seizure and illegal arrest. The Court, after hearing the testimony on this motion, denied the motion to suppress and admitted the items into evidence. As a result of this improper ruling, the Petitioner was found guilty.

Of course, the Petitioner feels that both the arrest and the search and seizure of his car was illegal. To begin with, the officer had no warrant. Nevertheless, the rule of thumb would be necessary as far as his information was concerned would be the same as if he had a warrant. The arrest was only as strong legally as the degree of reliability of his informant. Warrant or no warrant.

The arrest lacked probable cause because the reliability of the informant plus the type of information given by the informer did not meet the standards set out in *Spinelli v. U.S.*, 89 Supreme Court Reporter 587. Here the Court stated:

> "Applying these principals to the present case, we first consider the weight to be given the informer's tip when it is considered apart from the rest of the affidavit. It is clear that a Commissioner could not

credit it without abdicating his constitutional function. Though the affiant swore that his confidant was "reliable," he offered the magistrate no reason in support of this conclusion. Perhaps even more important is the fact that Aguilar's other test has not been satisfied. The tip does not contain a sufficient statement of the underlying circumstances from which the informer concluded that Spinelli was running a bookmaking operation. We are not told how the F.B.I.'s source received his information—it is not alleged that the informant personally observed Spinelli at work or that he ever placed a bet with him. Moreover, if the informant came by the information indirectly, he did not explain why his sources were reliable. Compare *Saben v. U.S.*, 381 U.S. 214 85 S.Ct. 1365, 14 L. Ed. 2d 345 (1965). In the absence of a statement detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail so that the magistrate may know that he is relying in something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation."

Also, in the same opinion, the Court added, at page 587, the following:

"While recognizing that the constitutional requirement of probable cause can be satisfied to hearsay information, this Court held that the affidavit was inadequate for two reasons, first the application failed to set forth any of the underlying circumstances necessary to enable the magistrate independently to judge the validity of the information's conclusion that the narcotics were where he said they were. Secondly, the affiants "—and this has been covered in this case—" the affiants—the affiant officers did not attempt to support their claim that their informant was credible or his information reliable."

In the instant case, the test of the Spinelli case was not met in that the information that the informant had was credible or sufficient.

The search and seizure was illegal because Sgt. Tabeling acted too hastily. He did not secure a warrant to search the car. He had every opportunity to do so. Both Owings and the Volkswagen were under restraint or in the custody of Sgt. Tabeling at the time that the car was stopped. What information or evidence he needed was in the car which he searched, even though he knew from his informer that the contraband would be in the automobile. Owings was already under restraint. The Sergeant could have had the automobile taken to the impounding lot, called in, and had a warrant ready for the search of the car. The search of the car or Owings was not an incident to the arrest because Sgt. Tabeling was relying upon what his informer had given him and nothing else.

Where a warrant is essential it should be gotten. *U.S. v. Kleefeld*, 275 F. Supp. 761.

Along the same principal of the legality of search and seizures, the case of *Glisson v. U.S.*, 406 Fed. 2nd at p. 424 had the following to say:

> "Visual examination of truck did not institute a 'reasonable search' where truck was parked at a truck park at time of search, while Defendant was in jail on an unrelated offense, where opening door to obtain identification number was not an incident to arrest of Defendant, no emergency existed requiring identification number to be immediately obtained, and there appeared to be no danger that evidence would be removed or destroyed, so that it was plain error to permit fruits of such search to be introduced in evidence in Dyer act prosecution, 18 U.S.C.A. Sec. 2312; U.S.C.A. Cont. Amend. 4."

Again, Owings insists that, as a matter of law, that there was no emergency as stated in the above that required an immediate search *without a warrant*.

As a result of the improper action of the police in the searching of the car and person of the Petitioner, he was deprived of the right guaranteed to him by the Fourth

Amendment of the Constitution of the United States which prohibits all unreasonable searches.

CONCLUSION

For the reasons stated above, certiorari should issue to the Court of Special Appeals of Maryland as to Indictment 140 of the 1969 Docket of the Criminal Court of Baltimore City.

Respectfully submitted,

KARL GOODMAN
I N A Building
303 East Fayette Street
Baltimore, Maryland 21201

MORRIS LEE KAPLAN
1305 Court Square Building
Baltimore, Maryland 21202

MICHAEL LEE KAPLAN
1305 Court Square Building
Baltimore, Maryland 21202

Attorneys for Petitioner

APPENDIX A

Appellant was convicted at a court trial of having possession and control of marihuana and was sentenced to four years under the jurisdiction of the Department of Correction. On this appeal he contends that as he was illegally arrested, the search of the automobile he was then driving was likewise illegal; and that the admission into evidence of the marihuana seized as a result of that search constituted reversible error.

At the trial Sergeant Steven Tabeling of the Baltimore City Police Department testified that at approximately 6:00 p.m. on December 28, 1968, he received a phone call from an informant, a former drug addict, who had furnished him "information which had led to the arrest and conviction on one subject for the possession of Marihuana and burglary, on two others for possession of Heroin and on two others for possession of Marihuana"; that the informant "had also supplied [him] information that had led to the recoveries of various amounts of drugs"; and that two of the people concerning whom the informant had furnished information "were convicted in this court last week." He further testified that his informant told him "that a man by the name Sheldon Owings, who was a white male, had reddish color hair, had a red beard would come to 11 Elmwood Road at about 7:00 p.m. on the night of the 28th"; that "[i]n his possession he would have two kilos of Marihuana"; that "[h]e would also have approximately one hundred pills of mescaline" (a hallucinogenic drug); that "Owings would be driving a Volkswagen which was light in color and had the appearance of a Volkswagen bus"; and that "it would have foreign tags on it." Tabeling testified that the address in question was about a mile and one half from where he received the call from his informer; that he didn't think he had time to secure a search warrant for the vehicle; that he then went to the location to await the arrival of Owings; and that at about 7:30 p.m. a man later identified as the appellant Owings and having a "reddish color" beard arrived

"driving a gray Volkswagen bus type with a foreign tag on it." Sergeant Tabeling approached the vehicle as it was entering the driveway at 11 Elmwood Drive, where "I identified myself to Mr. Owings and told him that I was going to make a search of his vehicle for narcotics." The vehicle was then searched. Two bricks of marihuana were found in the rear of the vehicle, together with a package of marihuana seeds and a quantity of non-narcotic pills. Appellant was then arrested.

It is well settled that an automobile, unlike a dwelling or person, may be searched without a warrant where there is probable cause in the constitutional sense to believe that the contains that which is subject to seizure, whether it be contraband, the fruits or instrumentalities of a crime, or other evidence thereto pertaining; and the right so to search an automobile, or other movable vehicle, does not depend on whether the searching officer first had probable cause to arrest the driver or other occupant. *Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216; *Johnson v. State*, 8 Md. App. 28; *Cornish v. State*, 6 Md. App. 167; *Sweeting v. State*, 5 Md. App. 623. The rule is justified on the basis that an automobile is so readily movable as to make impracticable the obtaining of a search warrant; and the rule applies to parked vehicles even where no immediate danger exists that the articles to be seized from the vehicle will be removed. *Sweeting v. State*, *supra*, at page 628.

We held in *Johnson v. State*, *supra*, at page 33, that probable cause to conduct a warrantless search of an automobile exists in the constitutional sense when the facts and circumstances within the officer's knowledge, and of which he had reasonably trustworthy information, were such as would warrant a man of reasonable caustion in believing that the vehicle contained that which was lawfully subject to seizure. While a mere suspicion will never suffice to establish probable cause, neither is certainty a requirement. An officer is therefore not required to have actual knowledge that the vehicle harbors the items to be seized at the time he under-

takes his warrantless search. As stated by the Supreme Court in *Spinelli v. United States*, 393 U.S. 410, "only the probability, and not a *prima facie* showing of criminal activity is the standard of probable cause." Where, as here, the legality of the search of appellant's motor vehicle depends upon the existence of probable cause and the information upon which the arresting officer acted in initiating the search was received from an undisclosed informant the rule, more concretely stated, is that probable cause is shown where the informer's information, together with the officer's personal knowledge, are such as show, with specificity, what the informer actually said and why the officer thought the information was credible; and it is further shown that such information was sufficiently reliable and reasonably trustworthy to give the officer, as a prudent man, probable cause to believe that the vehicle contained the fruits or instrumentalities of a crime or other evidence pertaining thereto. *Cornish v. State*, *supra*, and cases cited at page 176. The rule, stated in somewhat different terms, but meaning essentially the same thing, is that where the search of the motor vehicle is initiated on hearsay information received from an informer, the State, to establish its legality where challenged, must sufficiently inform the trial judge of some of the underlying circumstances from which the informant concluded that the vehicle harbored fruits, instrumentalities, or evidence of a crime, and some of the underlying circumstances from which the police concluded that the informant was credible or his information reliable. *See Mullaney v. State*, 5 Md. App. 248, and cases cited at page 254.

Appellant contends that under *Spinelli v. United States*, *supra*, probable cause cannot be established unless the basis for the informer's conclusion that the accused was committing a crime is shown with particularity. He contends in the instant case that there was absolutely no showing of any "underlying circumstances" from which the informer concluded that the appellant was carrying narcotics in his vehicle. *Spinelli* is undoubtedly the Supreme Court's most

recent and definitive case involving the use of information obtained from an informer as a basis for probable cause.[1] While the court there found that a search warrant was not supported by probable cause because, among other reasons, the basis for the informer's tip that the accused was committing a crime was not shown, it reverently reaffirmed its earlier landmark decision in *Draper v. United States*, 358 U.S. 307. In *Draper*, a federal narcotics agent of considerable experience was told by a paid informer that defendant Draper was engaged in narcotics traffic, and that Draper had gone to Chicago on the train and was going to bring back three ounces of heroin on one of two specified dates. The informer also gave the agent a detailed physical description of Draper and of the clothing that he would be wearing, saying that he would be carrying a tan zipper bag and that he habitually walked fast. The informant had given the agent reliable information on several previous occasions regarding narcotic violations. On the second of the specified days, the agent observed the person having the exact physical description and wearing the precise clothing described by the informer "alight from the incoming Chicago train and start walking 'fast' toward the exit. He was carrying a tan zipper bag in his right hand and his left was thrust in his raincoat pocket." The agent stopped Draper, arrested him, then searched him and found two envelopes containing heroin clutched in his left hand in his raincoat pocket and found a syringe in the tan zipper bag. On the basis of what the informer had told the agent and on the agent's corroboration of this information, the court said:

---

[1] In *Spinelli*, the Supreme Court said:

> "While *Draper* involved the question whether the police had probable cause for an arrest without a warrant, the analysis required for an answer to this question is basically similar to that demanded of a magistrate when he considers whether a search warrant should issue."

We think it similarly apparent that the principles enunciated in both *Spinelli* and *Draper* control the question whether probable cause has been shown for a vehicle search.

> "* * * [the agent] had personally verified every facet of the information given him by [the informer] except whether petitioner had accomplished his mission and had the three ounces of heroin on his person or in his bag. And surely, with every other bit of [the informer's] information being thus personally verified, [the agent] had 'reasonable grounds' to believe that the remaining unverified bit of [the informer's] information—that Draper would have the heroin with him—was likewise true." 358 U.S. at 313.

The case before us closely parallels *Draper*, except that here a naked vehicle search is involved rather than a search incident to an arrest. As in *Draper*, an obviously reliable informant told Sergeant Tabeling that appellant was going to arrive at a specified place at a specified time by means of a specified mode of transportation and would have in his possession prohibited narcotics of a specified type. As in *Draper*, the appellant's physical appearance was described with particularity such that there could be no mistaking his identification. And, lastly, as in *Draper*, Sergeant Tabeling, prior to his search of appellant's vehicle, personally observed everything that the informant had told him other than that the vehicle contained narcotics. Thus, as in *Draper*, there was probable cause to search appellant's vehicle for narcotics on these facts.

Spinelli and *Draper* would thus seem to involve two different, but constitutionally adequate, tests to determine the sufficiency of an informer's information sought to be used as a basis for probable cause. *Spinelli*, as we pointed out in *Price v. State*, 7 Md. App. 131, would seem to require, in substance, that the informer's tip, to constitute probable cause in a constitutional sense, show, first, "underlying circumstances" such as would enable a magistrate or reviewing court independently to judge the validity of the informer's conclusion that a crime was being committed, or, as here, that evidence thereof was to be found in the automobile of the accused; and, secondly, there be set forth information showing that the informer was "credible," or his informa-

tion "reliable." If the informer's information does not meet these requirements, as postulated in *Spinelli*, then the question is whether, under *Draper* where the reliability of the informer is clearly shown is his information so sufficiently detailed that, when corroborated, it becomes at least as trustworthy as a tip meeting *Spinelli* requirements without independent corroboration. When it is, it becomes apparent, observed the court in *Spinelli*, that the police were relying on something more substantial than casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation; on the contrary, such information is of a sort which, in common experience, may be recognized as having been obtained in a reliable way, so that a judicial officer, when confronted with such detail, could reasonably conclude that probable cause existed in the constitutional sense. *See Frey v. State*, 3 Md. App. 38. Within these principles, we think it clear that even though there was no showing in the instant case how the informer received his information that appellant would be carrying narcotics in his automobile, nevertheless, probable cause was plainly shown under the rationale of *Draper*.

Appellant's further contention that the evidence was insufficient to support the conviction is based on the premise that the articles seized from his vehicle were not properly admissible in evidence at the trial. As we have held otherwise, it is apparent that there was sufficient evidence to support the convictions.

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

APPENDIX B

SHELDON SHIPLEY OWINGS	•	IN THE
	•	COURT OF APPEALS
v.	•	OF MARYLAND
	•	Miscellaneous Docket No. 26
STATE OF MARYLAND	•	September Term, 1970
	•	(No. 209 - September Term,
	•	1969 Court of Special
	•	Appeals)

• • • • • •

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED by the Court of Appeals of Maryland that the said petition be, and it is hereby, denied.

/s/ Hall Hommond
Chief Judge

Date: May 11, 1970

SUPREME COURT, U. S.

FILED

4 1971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 819

SHELDON SHIPLEY OWINGS,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION

FRANCIS B. BURCH,
Attorney General,
EDWARD F. BORGERDING,
Assistant Attorney General
of Maryland,
Chief, Criminal Division,
ROBERT A. DiCICCO,
Assistant Attorney General
of Maryland,
1200 One Charles Center,
Baltimore, Maryland 21201,
For Respondent.

The Daily Record Co., Baltimore, Md. 21202

Table of Contents

	PAGE
Opinion Below	1
Jurisdiction	2
Constitutional Provisions Involved	2
Question Presented	3
Argument:	
The search of the Petitioner's vehicle and his arrest were not unconstitutional	5
Conclusion	13

Table of Citations

Cases

Brinegar v. United States, 338 U.S. 160, 93 L. Ed. 2d 1879, 69 S. Ct. 1302 (1949)	6
Carroll v. United States, 267 U.S. 132, 69 L. Ed 543, 45 S. Ct. 280 (1925)	6, 7
Chambers v. Maroney, U.S. , 26 L. Ed. 2d 419, S. Ct. , (1970)	6, 7
Draper v. United States, 358 U.S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329 (1959)	7
Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216, 20 L. Ed. 2d 538, 88 S. Ct. 1472 (1968)	6, 7
Owings v. State, 8 Md. App. 572, 261 A. 2d 223	1, 2, 3
Spinelli v. United States, 393 U.S. 410, 21 L. Ed. 2d 637, 89 S. Ct. 584 (1968)	9

Constitution

United States Constitution:	
Fourth Amendment	3
Fourteenth Amendment, Section 1	2

Statute

28 U.S.C. Section 1257 (3)	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 819

SHELDON SHIPLEY OWINGS,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION

OPINION BELOW

On May 11, 1970, the Court of Appeals of Maryland denied a Petition for Writ of Certiorari to the Court of Special Appeals of Maryland in the case of *Owings v. State*, 8 Md. App. 572, 261 A. 2d 223 (1970). The Order denying Certiorari appears in the Record at p. , Petitioner's Appendix B. The Opinion of the Court of Special Appeals of Maryland is reported and further set out in Petitioner's Appendix A.

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. 1257 (3). The Opinion of the Court of Special Appeals of Maryland in *Owings v. State, supra*, filed on January 28, 1970, affirmed the May 1, 1969, judgment and sentence of the Criminal Court of Baltimore. The Order denying Certiorari to the Court of Special Appeals of Maryland was entered on May 11, 1970, by the Court of Appeals of Maryland.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States

[Amendment IV]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[Amendment XIV]

Section 1.

All persons born or naturalized in the United States and subject to the Jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

QUESTION PRESENTED

Whether there was a denial of the Petitioner's rights under the Fourth Amendment of the Constitution, applied to the sovereign states under the Fourteenth Amendment, when the police searched his vehicle and arrested him and the fruits of that search were later admitted into evidence at his trial.

STATEMENT OF THE CASE

The Petitioner was tried under Indictment 140 of the January Term, 1969, of the Criminal Court of Baltimore, before the Honorable George D. Solter, sitting non-jury, and was convicted of possession and control of marijuana for which he received a sentence of four (4) years' imprisonment.

The Petitioner appealed to the Court of Special Appeals of Maryland, which affirmed the lower court in *Owings v. State, supra*, holding specifically, that the Petitioner had not been denied his rights under the Fourth Amendment of the United States Constitution. The Petitioner sought a Writ of Certiorari in the Court of Appeals of Maryland, which was denied on May 11, 1970.

The facts surrounding the Petitioner's conviction are not disputed. At approximately 6:00 p.m., December 28, 1968, Sergeant Stephen Tabeling of the Baltimore City Police received a telephone call from a narcotic informant. Sergeant Tabeling, a 16 year veteran who spent the last two years with the narcotic squad, repeated the informant's tip, as well as the reasons why he believed the informant (T. 6, 7):

> "At about 6:00 p.m. December 28th, 1968, I received a call from a reliable informant. This informant is known to me. This informant is a former drug addict. I know this of my own knowledge. This informant at

this time had furnished me information which had led to the arrest and conviction on one subject for the possession of marijuana and burglary, on two others for possession of heroin and on two others for possession of marijuana. He had also supplied me information that had led to the recoveries of various amounts of drugs. Two of these people that he furnished me information on were convicted in this court last week. I received information from the informant that a man by the name of Sheldon Owings, who was a white male, had reddish color hair, had a red beard would come to 11 Elmwood Road at about 7:00 p.m. on the night of the 28th. In his possession he would have two kilos of marijuana. He would also have approximately one hundred pills of mescaline, which is an hallucigenic drug. . . ."

"I was told that Mr. Owings would be driving a Volkswagen which was light in color and had the appearance of a Volkswagen bus and that it would have foreign tags on it."

At the time Sergeant Tabeling received this call, he was located at Northern District Police Station at Keswick and 34th Streets in Baltimore. The suspect was supposed to arrive at 11 Elmwood Road at approximately 7:00 p.m. that same night, a distance of approximately a mile and a half from the Northern District. Sergeant Tabeling testified that he did not have time to prepare and execute a search warrant in time to intercept the suspect. He indicated that he had less than one hour to obtain the warrant because he would have had to be at the rendezvous before 7:00 p.m. in case the suspect arrived earlier (T. 22-23).

Sergeant Tabeling testified that he went to the intersection of Midvale and Longwood Roads in Baltimore where he could observe 11 Elmwood Road. At approximately 7:30 p.m., at the precise location specified, he saw the

Petitioner drive up in a grey Volkswagen with foreign tags. He noted that the Petitioner was a man driving the bus and had a reddish colored beard and hair. Sergeant Tabeling approached the vehicle as the Petitioner was in the process of backing into a driveway, and identified himself to the Petitioner as a police officer. He told the Petitioner that he was going to search his vehicle for marijuana and mescaline and thereafter went to the rear of the vehicle and found two kilos or bricks of marijuana. In the glove compartment of the vehicle he found approximately 79 capsules containing a bluish-green powder. The Petitioner was arrested and transported to the Northern District Police Station (T. 4, 14, 15, 23).

In ruling on the legality of the search and seizure, the trial judge, the Honorable George D. Solter, said (T. 12):

> "I just had occasion to go into the Spinelli case somewhat yesterday and the issue, of course was corroboration of the informant's information and it seemed — it does seem to me that the corroboration of the information and the reliability of the informant is present in the actual events that took place before he accosted the Defendant and searched the vehicle. So, for those reasons, I will overrule your objection, Mr. Garrity."

After the ruling of the trial judge, the seized kilos of marijuana were admitted into evidence. The Petitioner presented no testimony and was convicted of possession and control of marijuana.

ARGUMENT

THE SEARCH OF THE PETITIONER'S VEHICLE AND HIS ARREST WERE NOT UNCONSTITUTIONAL.

The Petitioner claims [sic] that the Court of Special Appeals of Maryland has violated his constitutional rights under the Fourth Amendment by affirming the decision of

the lower court which upheld the validity of the search of his car and his arrest. The Respondent will confine its discusssion to the premise that the actions of the Baltimore police in searching Petitioner's vehicle and arresting him did not violate his constitutional rights because the police had probable cause to believe that the vehicle contained contraband (prohibited narcotics) and that the Petitioner was in possession or control thereof.

In *Chambers v. Maroney*, U.S. , 26 L. Ed. 2d 419, S. Ct. (1970), this court reviewed the circumstances justifying a warrantless search of a vehicle. In doing so, it reaffirmed its holding in *Carroll v. United States*, 267 U.S. 132, 158-159, 69 L. Ed. 543, 554, 45 S. Ct. 280 (1925), that the measure of legality of a vehicle seizure is *the seizing officer must have reasonable or probable cause for believing that the vehicle which he stops contains contraband or other contents which offend against the law. Dyke v. Taylor Implement Manufacturing Company*, 391 U.S. 216, 20 L. Ed. 2d 538, 88 S. Ct. 1472 (1968);* *Brinegar v. United States*, 338 U.S. 160, 93 L. Ed. 2d 1879, 69 S. Ct. 1302 (1949). The court was careful to point out in *Chambers*, 26 L. Ed. 2d 428, that it was not unequivocally sanctioning warrantless searches of vehicles:

> "Neither Carroll, supra, nor other cases in this Court require or suggest that in every conceivable circumstance the search of an auto even with probable cause may be made without the extra protection for privacy which a warrant affords. But the circumstances which furnish probable cause to search a particular auto for particular articles are most often unforeseeable; moreover, the opportunity to search is fleeting since a car is readily movable. Where this is true, as in Carroll and the case before us now, if an effective search is to

* In *Dyke*, this court recognized that because of the mobility of the automobile it may be subjected to a warrantless search upon facts that would not justify such a search of a dwelling or office.

> be made at any time, either the search must be made immediately without a warrant or the car itself must be seized and held without a warrant for whatever period is necessary to obtain a warrant for the search. . . . For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment." (Footnote omitted.)

Comparing this court's holdings in *Chambers*, *Dyke*, and *Carroll* to the case at bar, if Sergeant Tabeling had probable cause to conduct a warrantless search of the Petitioner's vehicle, whether he searched the vehicle immediately upon stopping it, or held it for the purpose of obtaining a warrant from a magistrate, there was no violation of the Petitioner's constitutional rights.

Whether the informant's tip in this case, when coupled with Sergeant Tabeling's personal observations, supplied him with sufficient probable cause to make a warrantless search of Petitioner's vehicle is controlled by this court's holding in *Draper v. United States*, 358 U.S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329 (1959). There a "special employee" (informer) of the Federal Narcotics Bureau in Denver told a Federal narcotic agent that Draper had gone to Chicago by train and was going to return to Denver with three ounces of heroin on September 8 or 9, 1956. Although the "special employee" gave the narcotic's agent no indication as to how his information was obtained, he did give the agent a detailed description of Draper, including the clothing he would be wearing and that he would be carrying a "tan zipper bag" and walking "real fast." The agent and Denver police went to the Denver station on September 8 but did not see anyone fitting Draper's description.

On September 9 they returned and saw a person matching the physical description of Draper, wearing the precise clothing described by the informer, arrive on an incoming Chicago train with the tan zipper bag and begin walking "fast toward an exit." The suspect was arrested and found carrying two envelopes of heroin.

In upholding the validity of the warrantless search, this court held at 358 U.S. 312-313:

> "The information given to narcotic agent Marsh by 'special employee' Hereford may have been hearsay to Marsh, but coming from one employed for that purpose and whose information had always been found accurate and reliable, it is clear that Marsh would have been derelict in his duties had he not pursued it. And when, in pursuing that information, he saw a man, having the exact physical attributes and wearing the precise clothing and carrying the tan zipper bag that Hereford had described, alight from one of the very trains from the very place stated by Hereford and start to walk at a 'fast' pace toward the station exit, Marsh had personally verified every facet of the information given him by Hereford except whether petitioner had accomplished his mission and had the three ounces of heroin on his person or in his bag. And surely, with every other bit of Hereford's information being thus personally verified, Marsh had 'reasonable grounds' to believe that the remaining unverified bit of Hereford's information — that Draper would have the heroin with him — was likewise true.
>
> "'In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical: they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.' Brinegar v. United States, supra (338 U.S. at 175). Probable cause exists where 'the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient

in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed. Carroll v. United States, 267 U.S. 132, 162, 69 L. ed. 543, 555, 45 S. Ct. 280, 39 A.L.R. 790.

"We believe that, under the facts and circumstances here, Marsh had probable cause and reasonable grounds to believe that petitioner was committing a violation of the laws of the United States relating to narcotic drugs at the time he arrested him."

This court's most recent case discussing search and seizure based on an informant's tip is *Spinelli v. United States*, 393 U.S. 410, 21 L. Ed. 2d 637, 89 S. Ct. 584 (1969) which considered the validity of a search warrant. In that case the affidavit of probable cause recited the tip as follows:

"The Federal Bureau of Investigation has been informed by a confidential reliable informant that William Spinelli is operating a handbook and accepting wages and disseminating wagering information by means of the telephones which have been assigned the numbers WY DOWN 4-0029 and WY DOWN 4-0163." Appendix to Opinion of the Court.

The Affidavit went on to relate that Spinelli was seen thereafter on five separate days in August of 1965 driving in and about East St. Louis, Illinois, and St. Louis, Missouri; going to an apartment which the Telephone Company had revealed contained the two telephones; and that the agent knew Spinelli was a bookmaker and an associate of bookmakers and gamblers.

The court concluded that the affidavit lacked sufficient probable cause for the issuance of the warrant because (a) the affiant offered no reasons in support of his conclusion that the informant was reliable and (b) there was nothing in the informant's tip that would show the

"underlying circumstances" from which the informant could conclude that Spinelli was running a bookmaking operation. In discussing possible ways to provide the magistrate with some details of the manner in which the informant's knowledge was gathered, this court said that *Draper* should be the appropriate model. 393 U.S. 416-418:

> "The detail provided by the informant in Draper v. United States, 358 U.S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329 (1959), provides a suitable benchmark. While Hereford, the Government's informer in that case, did not state the way in which he had obtained his information, he reported that Draper had gone to Chicago the day before by train and that he would return to Denver by train with three ounces of heroin on one of two specified mornings. Moreover, Hereford went on to describe, with minute particularity, the clothes that Draper would be wearing upon his arrival at the Denver station. A magistrate, when confronted with such detail, could reasonably infer that the informant had gained his information in a reliable way.
>
> "Nor do we believe that the patent doubts Aguilar raises as to the report's reliability are adequately resolved by a consideration of the allegations detailing the FBI's independent investigative efforts. . . . Once again, Draper provides a relevant comparison. Independent police work in that case corroborated much more than one small detail that had been provided by the informant. There, the police, upon meeting the inbound Denver train on the second morning specified by informer Hereford, saw a man whose dress corresponded precisely to Hereford's detailed description. It was then apparent that the informant had not been fabricating his report out of whole cloth; since the report was of the sort which in common experience may be recognized as having been obtained in a reliable way, it was perfectly clear that probable cause had been established. (Footnotes omitted.)"

Using *Draper* as a bench mark to determine whether Sergeant Tabeling's informant here was reliable and that he had obtained his information in a reliable way, the following analysis reveals that *Draper* and *Owings* are virtually congruent:

The Informant was Reliable

In *Draper* the informer was a paid "special employee" who, from time to time, had given the agent 'information" regarding violations of narcotic's laws which was always found reliable. In *Owings* the informant was a former drug addict whose information on prior occasions was so reliable that it had led to the arrest and conviction of five people for violations of narcotic's laws relating to marijuana and heroin and in addition, had led to the recovery of various amounts of drugs. The conclusion is inescapable, therefore, that the informant in *Owings* was as reliable as the informer in *Draper*.

The Informant's Information was Reliable.

In *Draper*, although the informer did not state how he had obtained his information, he described with "minute particularity", (a) that Draper would arrive by train from Chicago on one of two days; (b) that he would be wearing specific clothing; (c) that he would be carrying a tan zipper bag and walking fast, and that he would have in his possession heroin. The court concluded that this information would support the reasonable inference that the informant had gained his information in a reliable way. In *Owings*, although the informant did not state how he had obtained his information, he described with "minute particularity" that, (a) within one hour of the phone call, the Petitioner would be at 11 Elmwood Road in Baltimore; (b) that he was a white male with red hair and a red beard; (c) that he would be driving a light colored Volkswagen bus with foreign tags, and (d) that he would be transporting two kilos of marijuana and a quantity of mescaline.

The conclusion is inescapable that, if a magistrate were to have been confronted with such detail, the only reasonable inference would be that the informant had gained his information in a reliable way.

The Informant's Tip was Corroborated.

In *Draper*, this court concluded that the police had corroborated the informer's report when they met the Chicago to Denver train on the second morning and observed a man who precisely matched the description of Draper given by the informer carrying the zipper bag and walking fast as the informer claimed. Likewise, in *Owings*, Sergeant Tabeling went to the exact location specified and at the precise moment forecast by the informant and saw a man matching Owings' description arrive driving the vehicle described by the informer.

It is respectfully submitted, therefore, that Sergeant Tabeling would have been derelict in his duties if he did not pursue the information furnished by his informant, the rehabilitated narcotic addict, whose information had always been accurate and reliable. Furthermore, when pursuing the information, he saw a man with the exact physical attributes and driving the same vehicle at the precise time and location advised by the informant. Sergeant Tabeling personally verified every facet of the information, except whether the Owings' vehicle did, in fact, contain two kilos of marijuana and a quantity of mescaline. With every other bit of the information personally verified by Sergeant Tabeling he had reasonable, if not compelling grounds to believe that the remaining portion of the tip, *i.e.*, that Owings would have the marijuana and mescaline in the Volkswagen bus, was also true. *Draper, supra*, 358 U.S. 312. Accordingly, his action in searching the vehicle and the Petitioner in the light of

the constitutionally adequate "reasonable grounds" did not violate the Petitioner's Fourth Amendment rights.

CONCLUSION

It is respectfully submitted, based on the reasons set forth above, that Certiorari should be denied.

Respectfully submitted,

FRANCIS B. BURCH,
Attorney General,
EDWARD F. BORGERDING,
Assistant Attorney General
of Maryland,
Chief, Criminal Division,
ROBERT A. DiCICCO,
Assistant Attorney General
of Maryland,
For Respondent.

PROOF OF SERVICE

I, Robert A. DiCicco, one of the attorneys for the State of Maryland, Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on February 3, 1971, I served copies of the foregoing Brief in Opposition to the Petition for Writ of Certiorari on the several parties thereto as follows:

(1) On the Petitioner, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to his respective attorneys of record as follows:

Karl Goodman

I N A Building
303 East Fayette Street
Baltimore, Maryland 21201

Morris Lee Kaplan,

1305 Court Square Building
Baltimore, Maryland 21202

Michael Lee Kaplan

1305 Court Square Building
Baltimore, Maryland 21202

Attorneys for Petitioner

ROBERT A. DICICCO,
Assistant Attorney General.